

# NEWFOUNDLAND FISHERY LAWS AIMED AT FRENCH.

## Not Intended to Be Enforced Against American Vessels.

### Interesting Extracts From U. S. Counsel Elder's Address.

(From our Special Correspondent.)

In continuing his argument upon the fisheries question before the Hague tribunal, Mr. Elder said he had to deal with the questions of more recent origin to some extent of more practical importance, questions two, three, four, six and seven, not questions involving such recondite considerations of international law as numbers one and five, but yet questions of the most vital importance to the conduct of the fisheries between the two nations.

He said he had found it of distinct service to arrange in order the events of the last few years which lead up to the arbitration and hoped it would be of service to the tribunal if he briefly reviewed those events.

The treaty of Washington terminated on July 1, 1886, but continued in force by modus until the first of January the following year. During that year, however, various seizures were made of American vessels. Sch. Thomas F. Bayard was seized at Bonne Bay on the ground that American fishermen could not fish on that shore and that the Mascot was seized at the port of Amherst, in the Canadian jurisdiction under a contention to the same effect.

The form of the notice in each case was that they could neither fish nor trade at either of these places. Upon reference being made to Great Britain both of these notices were withdrawn. Both of these seizures you will observe, were upon the treaty coast and these fishermen were seeking to exercise what were believed to be their treaty rights on this coast.

The position assumed by Canada and Newfoundland was such that the President of the United States was authorized by an act of March 3, 1887, to terminate relations with Canada and with the colony if he was convinced that they were unreasonably interfering with the rights of American fishing vessels, one of the significant things about is being that if the vessels if the United States were unreasonably crippled even in their commercial relations it would be regarded as a ground for putting the act into operation. That authority President Cleveland never put into effect, because, almost immediately, negotiations for what proved to be the Chamberlain-Bayard treaty were entered upon, and these negotiations promised at one time to serve as a way out of the entire difficulty.

#### The Newfoundland Bait Act.

The Newfoundland act of February 21, 1887, provided that no person without a license should export, catch, or sell for the purpose of exportation, any herring, caplin, squid, or other bait fishes. It will be noticed that neither that nor the statute of Canada prohibited commercial transactions in general, but merely prohibited the sale of certain specified articles which related directly to fishing.

Concerning this Act of Newfoundland, it is to be noticed that we have the advantage of having heard from Sir James Winter, in an interview which he granted to a London paper during a controversy which had occurred with Sir Robert Bond, published in the London Morning Post. It will appear a little later that Sir Robert Bond had been conducting something of a campaign in England and kindling a back fire on the British Government as to its attitude in Newfoundland. It was in response to this that this interview was granted by Sir James Winter who was in England, in which he said:

#### Interview with Sir James Winter Recalled.

"Sir Robert Bond's ultimate object is reciprocity with the United States—that is, of course, access to American markets for our fishery products—and he hopes to force the Americans to give us this reciprocity by shutting off the sale by our West coast fishermen of herring to the Americans. Whether his ultimate object—reciprocity—would be promoted by this policy is, to say the very best for it, extremely doubtful. I for one do not believe that there is any chance of its succeeding, or that the Americans will be forced by any such means to give us reciprocity. In the meantime his policy is only bringing ruin upon our herring fishermen. It is nothing but an experiment on his part, and I believe will end only in failure, even if he were permitted to carry it out. That is the opinion of many practical men. And, certainly, this reciprocity is not worth causing the least possible trouble either with the United States or the Imperial Government. The chances of success cannot be weighed in the balance against the grave difficulties that must arise out of any endeavor to force these measures."

Sir James said further:

"In 1887 a bait act was passed for the purpose of preventing the supply of bait to the French fishermen who use it for the purpose of catching codfish on the banks of Newfoundland. They took the cod into our markets, and by means of heavy bounties were able to undersell our fishermen. This act was clearly intended to be used, first of all, to prevent foreigners from using our bait against us, and, secondly, it was enforced only against Frenchmen on account of their competition in the matter of codfish, which was then almost our sole means of livelihood.

"It was never intended to interfere with the ordinary catching, sale, and exportation of herrings as articles of consumption—a consumption that has always been going on, and, as far as the sale to the Americans is concerned, with considerable profit to our people.

"It is by what I can call only a perversion and misapplication of the spirit of that act (although it may be according to the strict letter) that Sir Robert Bond is endeavoring now to interfere, as he has done, with the traffic with the Americans.

"In fact, the very same act contains provisions for facilitating and securing the continuance of the traffic in herrings as articles of food. When that act was passed in 1886 the country was on the verge of starvation on account of French competition; it was passed as a measure of self-preservation; the very life of the colony was at stake. But at the present moment there is no necessity for the application of that act in the case of the United States. There is no strong public demand for reciprocity with the United States. We never had better markets for our codfish than at present.

"The Americans are doing us no harm whatever; there is only a desire on the part of some people to obtain an entrance into American markets for the sale of cod, and there is the widest difference among practical men on that point. The best opinion is against it. Americans are not likely to be consumers to any large extent of our codfish. Our best markets are the Roman Catholic countries that buy our salted fish—Brazil, Spain, and the countries of the Mediterranean—and our markets in these countries were never better than they are now."

#### Act of 1887 Was Intended Against the French.

It will be seen that the act of 1887, if I correctly read what Sir James said—and interviews have been known to be not absolutely in accordance with the statements made—was intended against the French, and it will appear that it was never until 1905 enforced against the Americans.

On February 15, 1888, the Chamberlain-Bayard treaty was agreed upon. It provided for a commission to delimit the places in which, under the renunciatory clause, the Americans could not fish. Certain bays were delimited in the treaty itself. Several of the Newfoundland bays were delimited, but none of these were on the treaty coast. That, if the court please, we believe to be a most significant fact.

The treaty provided for the marking out only of bays on the non-treaty coasts and when it came to Newfoundland they were the bays on the eastern part of the southern coast and the eastern part of the island and did not touch the treaty coast. We believe that has a direct application to question six as to whether the treaty of 1818 gave us the right to enter into bays. Special bays were delimited—Fortune bay, Conception bay and others on the eastern coast, but not one of the large bays on the western coast was touched at all. Because no question had then arisen, no question was supposed to exist—and that was 70 years after the treaty had been made—as to our rights with respect to bays on the west coast of that island.

#### Failure of Treaty Followed by a Modus.

That treaty failed of approval before the United States senate, the adverse vote having been taken in August, 1888, but it provided for a modus pending the consideration of the question and to the modus, I desire to call some attention.

In the first section it provided for a license fee for entry to the ports of \$1.50 per ton for the purpose of purchasing bait, ice, seines, lines, supplies and outfits, transshipment of catch, or any convenience, or the shipment of crews. All that was paid for at the rate of \$1.50 per registered ton in the vessel itself.

The next section provided that the license fee would be remitted if the United States removed the duties on fish, and the third, that no entry or clearance shall be required if the port is entered for one of the four purposes named in the treaty, namely, shelter, repairs, wood and water, and if the ship does not remain for more than 24 hours.

The fourth is that forfeiture shall be exacted only for fishing or preparing to fish in prohibited waters—a simple, straightforward, business arrangement between the two countries which met the approval of Mr. Chamberlain, Mr. Bayard, Sir Charles Tupper, on the part of Canada, and Judge Putnam on the part of the United States.

The British case is authority for the statement that in so far as Canada is concerned that provision is still in force.

#### Instructions from Great Britain on Earlier Act.

In 1863, Newfoundland had in contemplation an act which might cover both the treaty and the non-treaty coasts, and a memorandum was addressed to Governor Bannerman by the Duke of Newcastle in reference to that, which says:

"That no act can be allowed which prohibits expressly, or is calculated by a circuitous method to prevent, the sale of bait.

"Third—That all fishing acts shall expressly declare that their provisions do not extend or interfere with any existing treaties with any foreign nation in amity with Great Britain.

"Fourth—That, in any part of the colonial waters, it would be highly unjust and inconvenient to impose upon British fishermen restrictions which could not, without violating existing treaties, be imposed upon foreigners using the same fisheries. On this point, however, I would refer you to my despatch, marked 'confidential', of the second of February."

That advice, or instruction, whichever you choose to call it, of the Duke of Newcastle, with reference to incorporating in all acts of Newfoundland a saving clause with regard to countries in amity with Great Britain, or having treaty rights, has been followed by Newfoundland.

#### License Fees Paid by American Vessels on Non-Treaty Coast.

There is one other fact that I want to draw attention to in connection with the act of 1887 which was, in effect, reproduced in the Consolidated Statutes of Newfoundland twice, I think. It would appear, though I concede not conclusively, that the license

fees received by Newfoundland, amounting to \$120,000, as has been stated, were wholly, or almost wholly, for rights on the non-treaty coasts of the island, rather than on the treaty coasts.

#### Treaties Had No Provision Regarding Shipment of Crews

In 1891 the Blaine-Bond treaty, was entered into. It was defeated; and Sir Robert Bond learned afterwards that it was through the intervention of Canada that that treaty came to grief. This was one, and I am almost constrained to call it the first of Sir Robert's grievances or disagreements at all events, in matters of policy with respect to his colony.

I call attention to the fact that neither that treaty nor the Hay-Bond treaty contained any provision with regard to the shipment of crews. Apparently up to that time, and I think I shall be able to show until 1905 and farther on than that, no question had arisen of the right of the Newfoundland to earn his living by working for an American or an American vessel whenever he could get employment, or to prevent an American vessel from employing such a man; and that the privilege was more and more availed of throughout all the years from 1818 down to the intervention of the foreign fishing vessels act (May 24, 1893).

#### The Foreign Fishing Vessels Act.

An act was passed with regard to foreign fishing vessels—it was the act of 1887—and had been directed against natives and their selling of bait and their conduct toward the foreign fishing vessels. But the act of 1893 was directed against the foreign fishing vessels themselves and prescribed a considerable number of penalties—search, and seizure—and the effect of having caplin and bait fishes on board as prima facie evidence of guilt, and all that sort of thing. But it was never put into force against the United States.

Sir Edward Grey's letter to Mr. Whitelaw Reid of February 2, 1906, points out that the act of 1905, the foreign fishing vessels act, is not new but that it dates back to this act of 1893.

And he goes on to say that his object in mentioning it is merely to show that this new act was not intended to do more than to call into effect the act which had previously not been in force. So that it appears that that act also as well as the act of 1887 was not enforced against Americans, and apparently the object of it, as Sir James Winter said, was with reference to the French and not with reference to American vessels.

What views the court will take of the fact that acts which can find their justification only in the necessary preservation of the bait supply of a colony are enforced against one country and not against another, I can not tell.



August 22.

## BIG FLEET AT T WHARF.

### Some Good Trips Landed at Boston Today.

The receipts of fish at Boston show the usual Monday heavy inflow and this was expected and predicted. Since Saturday a large fleet have arrived and most of them have good trips, so that the receipts more than supply demand.

Ground fish of all kinds are in large supply and prices are low, with exception of cod, which is firm for both large and small.

The steam trawler Spray is in again with a large trip of haddock, after being absent but four days.

It is doubtful whether Boston can absorb all that is offering today, and some of them may go to Gloucester to the splitters.

The fares and prices in detail are:

#### Boston Arrivals.

Sch. George H. Lube, 67 swordfish.  
Sch. Massasoit, 60 swordfish.  
Sch. Catherine D. Enos, 11 swordfish.  
Sch. Appomattox, 1200 haddock, 1500 cod.

Sch. Emelia Enos, 32,000 haddock, 4000 cod, 8000 hake.

Sch. Josie and Phoebe, 50,000 haddock, 3000 cod, 10,000 hake.

Sch. Richard J. Nunan, 4000 haddock, 10,000 cod, 75,000 hake, 12,000 cusk.

Sch. Philip P. Manta, 2000 haddock, 12,000 cod, 5000 hake.

Sch. Emily Sears, 8000 pollock.  
Sch. Hortense, 25,000 haddock, 30,000 cod.

Sch. W. H. Reed, 10,000 pollock.  
Sch. Rara Avis, 1500 pollock.

Sch. Actor, 13,000 pollock.  
Sch. Leo, 19,000 haddock, 500 cod.

Sch. Gracie, 1000 cod, 3000 pollock.  
Sch. Olive F. Hutchings, 31,000 haddock, 5000 cod, 3000 hake.

Sch. Sadie M. Nunan, 40,000 haddock, 30,000 cod, 7 swordfish.

Sch. N. A. Rowe, 200 cod, 500 hake, 7000 pollock.

Sch. Grace Darling, 3000 haddock, 31,000 cod.

Steamer Spray, 50,000 haddock, 7000 cod.

Sch. Mary C. Santos, 5000 haddock, 23,000 cod.

Sch. Julietta, 5000 haddock, 10,000 cod.

Sch. Rose Dorothea, 4000 haddock, 15,000 cod, 15,000 pollock.

Sch. Arbitrator, 16,000 haddock, 15,000 cod, 14,000 pollock.

Sch. Ida S. Brooks, 55,000 haddock, 20,000 cod.

Sch. Fannie Belle Atwood, 700 haddock, 12,000 cod, 5000 hake.

Sch. Walter P. Goulart, 50,000 haddock, 30,000 cod.

Haddock, \$1.25 to \$2.50 per cwt.; large cod, \$2.75 to \$3.75; market cod, \$2 to \$2.25; hake, \$1.25 to \$2; pollock, \$1.50 to \$2; swordfish, 10 1/2 c and 11c per lb.

August 22.

#### Halibut Sales.

The halibut fare of sch. John Hays Hammond, sold to the American Halibut Company for 8 cents per pound for white and 6 cents for gray with the heads on.

The fare of the sch. Juno remains unsold.

Sch. Kineo with 40,000 pounds halibut and sch. Waldo L. Stream with 25,000 pounds of halibut are at Portland and sold for 7 1/4 cents per pound for white and 5 1/2 cents for gray with the heads off.

August 22.

#### Good Stock.

Sch. Mary F. Curtis, Capt. Henry F. Curtis, which arrived last week from a shacking trip, made a fine stock of \$4100, while the crew shared \$121 each clear, which is one of the best made this season.

#### Will Command Sch. Agnes.

Capt. Norman Ross, who has been seining in sch. Veda M. McKown, has withdrawn from mackerel fishing and will now command sch. Agnes in the halibut fishery.

August 22.

## SOME MACKEREL BEING TAKEN.

### One Fare at This Port and Two at Newport.

Sch. Mary Emerson of the netting fleet arrived here yesterday with 460 fresh mackerel which sold to the Gloucester Fresh Fish Company at 30 cents each.

A special from Newport to the Times report the arrival of sloop Thomas Congdon, with 2000 fresh mackerel, and sloop Freedom with 1900 medium mackerel. This indicates that mackerel are yet on the coast.

A despatch from Sydney, C. B., report mackerel schools at Broad Cove, and that the shore fishermen were doing well, one boat taking 2000 and others from 400 to 6000. The prospect for American seiners were reported good should any of them come that way.

Reports from provincial sources are to the effect that mackerel is being taken at various places along the coast of Nova Scotia and Prince Edward island by the shore fishing and at some places they have been schooling. At Alberton, P. E. I., and the Magdalenes, the Canadian Fish Bureau of Friday last report fair catches being made.

#### Netters at Newport.

Sloop Thomas Congdon, 2000 medium fresh mackerel.

Sch. Freedom, 1900 medium fresh mackerel.

August 23.

#### Swordfish Fought for Eight Hours.

James Plant, one of the crew of sch. George H. Lube, which arrived at Boston with swordfish yesterday had a chance to test his patience and skill on the trip while trying to capture a swordfish that had been ironed. Plant set out after the fish, and found him active and determined not to be taken. For hours he fought and played with it to tire it out, and when the big fish found it could not get rid of the lily iron it sank to the bottom, and remained there as long as it could, only rising for air and to sink again. Plant went out for the swordfish until he got back again to the schooner with his catch, tired out and with more experience with swordfish than he had ever had before.

#### Portland Fish Notes.

The schooner Fanny Hayden has returned from her recent fishing trip bringing in 2000 pounds of halibut and 15,000 pounds of dry cod. On the way back three swordfish were caught and brought along as a part of the schooner's stock.

Sch. Waldo L. Stream of Gloucester landed 30,000 pounds of halibut and 5000 pounds of salt fish, and sch. Kineo, also of Gloucester, landed 40,000 pounds of halibut and 30,000 pounds of salt fish yesterday.

#### Codfish Sales.

The Gorton-Pew Fisheries Company made big purchases of fresh fish today in securing the four large fares of schs. Mary E. Cooney, Buema, Walter P. Goulart and Sadie M. Nunan, aggregating over half a million pounds of fish.

George Perkins & Son took the fare of sch. Mary B. Greer.

#### Made Four Swordfishing Trips.

Sch. George H. Lube arrived at Boston yesterday from her fourth swordfishing trip this season, and Capt. Lube has stocked by his catches nearly \$5000, and each of his men has had for share \$250. The Lube will go out again for another catch of swordfish before returning to haddocking.

August 23.

#### Sch. Ramona on the Way Home.

Sch. Ramona, Capt. Fred Upshell, one of the far north halibut flitchers, arrived at Arichat, C. B., on the way home, yesterday, with 100,000 pounds or more, which is a good trip when all things are considered.

August 23.

## NO NEWS FROM SHORE SEINERS.

### Sch. Margie Smith Reported Getting Mackerel on Hook.

Nothing have been heard from the four or five seiners who are now plying their vocation of mackerel fishing on the New England coast. The good prospects of last week when the seiners were making some fair hauls off Chatham appear to have dwindled into nothingness, as they have not been in for a week. But the season is early yet, and those prosecuting the mackerel fishery may be well rewarded for their labors before the season closes.

Favorable reports continue to come forward of mackerel being taken at various places on the provincial coast. It is also reported that sch. Margie Smith, which is on a hooking trip to North Bay took 12 barrels the first day she arrived at the Magdalenes, and the chances are good for all to secure good trips this fall.

August 23.

## BOSTON FISH RECEIPTS LARGE.

### But Prices Show Raise Over Yesterday.

While receipts at Boston today are heavy, owing to the arrival of a large number of vessels, prices are firm on cod and most other kinds of ground fish. This probably applies to new shore fish, which is always quoted higher than that from far off grounds.

What is somewhat remarkable that with the large receipts today, that codfish are quoted higher than yesterday at \$3.50 to \$4 per hundred weight from the vessel.

Tomorrow will doubtless see the last of the big fleet for this week, and for the following three days only small returns will be received. However, the market will not be short, for receipts already are sufficient to supply all needs, with the aid of a cold storage system.

On the Halifax steamer yesterday were 17 swordfish and on the Yarmouth steamer two barrels of mackerel, two swordfish and five albicore.

The fares and prices in detail are:

#### Boston Arrivals.

Sch. Helen B. Thomas, 32,000 haddock, 4000 cod, 6000 hake.

Sch. Mary B. Greer, 18,000 haddock, 36,000 cod.

Sch. Motor, 79 swordfish.

Sch. Gladys and Nellie, 32,000 haddock, 7000 cod, 5000 hake.

Sch. Matiana, 58,000 haddock, 5000 cod, 2000 hake, 2000 pollock.

Sch. Elva L. Spurling, 5000 cod, 12,000 hake, 5000 pollock.

Sch. Rebecca, 17,000 haddock, 5000 cod.

Sch. Louisa R. Sylva, 25,000 haddock, 10,000 cod, 8000 pollock.

Sch. Hattie T. Knowlton, 2000 haddock, 1000 cod.

Sch. J. J. Fallon, 50,000 haddock, 5000 cod, 5000 hake.

Sch. Mary E. Silveira, 10,000 haddock, 17,000 cod, 2000 hake.

Sch. Alice M. Guthrie, 7000 haddock, 10,000 cod, 10,000 hake.

Sch. Maud S. Silva, 40,000 haddock, 40,000 cod.

Sch. Harriet, 40,000 haddock, 40,000 cod.

Sch. Emerald, 2000 haddock, 4000 cod.

Sch. Laura Enos, 1000 cod, 5000 pollock.

Sch. Eva Avina, 1000 cod, 5000 pollock.

Sch. Diana, 10,000 pollock.

Sch. Reliance, 500 cod, 2000 pollock.

Sch. Morning Star, 300 cod, 1500 pollock.

Sch. Columbia, 500 cod, 3000 pollock.

Haddock, \$1.25 to \$2 per cwt.; large cod, \$3 to \$4.50; market cod, \$2.25 to \$2.50; hake, \$2.75 to \$3; pollock, \$2 to \$2.50; swordfish, 10 1/2 cts. per lb.